

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DAVID FLORES,

Plaintiff,

V.

THE CITY OF WENATCHEE; and
MARK HUSON,

Defendants.

NO. CV-10-0330-EFS

ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, GRANTING DEFENDANT'S MOTION TO BIFURCATE, ENTERING JUDGMENT, AND CLOSING FILE

Before the Court, without oral argument, are Defendants City of Wenatchee ("City") and Mark Huson's Motion for Summary Judgment Dismissal, ECF No. [24](#), and Motion to Bifurcate Plaintiff's False Arrest and 42 U.S.C. § 1983 Claims and Public Records Act (RCW 42.56) Violation, ECF No. [32](#). After reviewing the filed material and relevant authority, the Court is fully informed. For the reasons given below, the Court declines to exercise supplemental jurisdiction over Plaintiff David Flores' Public Records Act claim and enters judgment in Defendants' favor as to Mr. Flores' other claims.

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3 **A. Facts¹**

4 During the afternoon of May 5, 2009, Mr. Flores, his son, and
5 another individual were working within the city limits of Wenatchee,
6 Washington on Methow Street. They had removed two large elm trees and
7 were loading the heavy, cut wood into Mr. Flores' truck. Mr. Flores had
8 backed his work truck perpendicularly to the Methow street and sidewalk
9 to reduce the walking required for loading the logs. As a result, the
10 truck was parked across the southbound lane and sidewalk and protruded
11 approximately three feet into the northbound lane. Mr. Flores had placed
12 three traffic cones on each side of the truck in the southbound lane.
13 Flores Decl., ECF No. [40 ¶ 3](#). Mr. Flores had not obtained a permit from

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15 ¹ The parties filed a Joint Statement of Uncontroverted Facts, ECF
16 No. [46](#). The Court treats these facts as established consistent with
17 Federal Rule of Civil Procedure 56(d), and sets these forth without
18 reference to an ECF number. When considering the summary judgment motion
19 and creating this factual section, the Court 1) believed the undisputed
20 facts and the non-moving party's evidence, 2) drew all justifiable
21 inferences therefrom in the non-moving party's favor, 3) did not weigh
22 the evidence or assess credibility, and 4) did not accept assertions made
23 by the non-moving party that were flatly contradicted by the record. See
24 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986); *Scott v.*
25 *Harris*, 550 U.S. 372, 380 (2007).

1 the City to park in the City's lanes or sidewalks. Wilson Decl., ECF No.
2 [28 ¶ 6](#); Flores Dep., ECF No. [29](#), Ex. 1 at 6.

3 Michael Moore, a postal worker driving a postal truck on his
4 delivery route, stopped his truck in the southbound lane just north of
5 Mr. Flores' truck. Notwithstanding Mr. Flores' hand gestures motioning
6 Mr. Moore to go around the front of Mr. Flores' truck by using the
7 northbound lane, Flores Decl., ECF No. [40 ¶ 4](#), Mr. Moore declined to do
8 so because he was concerned that it was unsafe to use the northbound
9 lane, Moore Decl., ECF No. [27 ¶ 5](#). After waiting a couple of minutes in
10 his parked postal truck, Flores Decl., ECF No. [40 ¶ 4](#), Mr. Moore got out
11 of the postal truck and informed Mr. Flores that he would not go around
12 Mr. Flores' truck by using the northbound lane. Mr. Flores advised that
13 he was not going to move his truck. Mr. Moore then informed Mr. Flores
14 that he was going to call the police about Mr. Flores' truck blocking the
15 roadway and the Department of Labor and Industries (L & I) because there
16 was cut wood on the sidewalk. Mr. Flores became irritated at Mr. Moore
17 and told him to go ahead and call the police and L & I. Mr. Moore did
18 call the police, reporting that Mr. Flores' truck was parked on the 300
19 block of Methow Street and was blocking vehicle traffic.

20 After clearing an area of the wood, Mr. Flores was able to back his
21 truck closer toward the home's retaining wall. Flores Decl., ECF No. [40](#)
22 ¶ 6. The truck then blocked the sidewalk and protruded approximately 1
23 1/2 feet into the southbound lane. *Id.* ¶ 7. While Mr. Flores was still
24 in his truck, Sergeant Huson, who was responding to Mr. Moore's report,
25 arrived at the Methow Street location in his patrol vehicle. As he
26 arrived, Sergeant Huson observed 1) a northbound vehicle stopped and

1 waiting for Mr. Flores to move his truck, which then resumed northbound
2 after Mr. Flores' truck cleared the northbound lane, and 2) Mr. Moore's
3 previously-stopped postal truck maneuver around the front of Mr. Flores'
4 truck. ECF No. [36](#), Ex. 3 at 33. Sergeant Huson parked his vehicle along
5 the sidewalk of the southbound lane just north of Mr. Flores' truck.
6 Sergeant Huson motioned with his right hand for Mr. Flores to come speak
7 with him in his patrol vehicle. Flores Decl., ECF No. [40](#) ¶ 8. Mr.
8 Flores approached the passenger side window of the patrol vehicle. *Id.*
9 ¶ 9. Sergeant Huson advised Mr. Flores that he had to move his truck so
10 that it did not block the roadway. Huson Decl., ECF No. [36](#) ¶ 16. Mr.
11 Flores expressed his frustration with Mr. Moore, calling him a "stinking
12 jerk." Flores Decl., ECF No. [40](#) ¶ 9. In a loud tone, Sergeant Huson
13 advised Mr. Moore, "You're just not getting this." *Id.* Sergeant Huson
14 then got out of his vehicle and motioned with his right hand for Mr.
15 Flores to speak with him near the front of the patrol vehicle. *Id.* ¶ 10.
16 Mr. Flores complied and discussed the interaction that he had with Mr.
17 Moore, and Sergeant Huson again loudly responded that Mr. Flores was not
18 understanding the situation and that he would have to move the truck.
19 *Id.* In order to carry out Sergeant Huson's directive, Mr. Flores began
20 to move the wood chipper to make room to park the truck. *Id.* ¶ 11.
21 Sergeant Huson loudly stated, "I told you to move the truck." *Id.* Mr.
22 Flores explained that he was making room to park the truck parallel with
23 the southbound sidewalk. *Id.*

24 Sergeant Huson then pulled his patrol vehicle around Mr. Flores'
25 truck and parked just south of it. *Id.* ¶ 12. Getting out of his vehicle
26 with his citation book, Sergeant Huson again requested that Mr. Flores

1 come speak with him and asked for his driver's license. *Id.*; Huson
2 Decl., ECF No. [36 ¶ 20](#). Mr. Flores walked over to Sergeant Huson and
3 continued to explain that the traffic had not been obstructed because
4 cars were able to use the northbound lane. *Id.* Sergeant Huson again
5 loudly stated, "You're just not getting this. Turn around and put your
6 hands behind your back." Sergeant Huson then advised Mr. Flores that he
7 was under arrest and handcuffed him. *Id.* Mr. Flores was arrested for
8 disorderly conduct in violation of Wenatchee City Code 6A.12.010.

9 After verbal exchanges between Mr. Flores, his son, and Sergeant
10 Huson, Mr. Flores was placed in Sergeant Huson's patrol vehicle. When
11 both Sergeant Huson and Mr. Flores were in the vehicle, Mr. Flores
12 inquired as to why he was arrested. Sergeant Huson advised that he was
13 arrested for calling Mr. Moore a "jack ass." Mr. Flores denied using
14 that word to describe Mr. Moore. Mr. Flores was taken to the police
15 station but was not issued a criminal citation. Sergeant Huson later
16 drove Mr. Flores back to his house and dropped him off.

17 On September 8, 2009, Mr. Flores made a Public Records Act request
18 to the City's Police Department for documents pertaining to the May 5,
19 2009-incident. The City declined to disclose the records, claiming they
20 were exempt from disclosure. Mr. Flores, through counsel, made a second
21 request. Approximately seventy days later, this request was ultimately
22 granted.

23 On September 28, 2010, Mr. Flores filed this lawsuit, asserting that
24 1) Sergeant Huson falsely arrested him, for which the City is vicariously
25 liable, and violated his federal civil rights in violation of 42 U.S.C.
26 § 1983, and 2) the City violated the Public Records Act, RCW 42.56. ECF

1 No. [1](#). In the Spring of 2012, Defendants filed the instant motions, ECF
2 Nos. [24](#) & [32](#), and briefing followed.

3 **B. Summary Judgment Motion**

4 **1. Standard**

5 Summary judgment is appropriate if the record establishes "no
6 genuine issue as to any material fact and the movant is entitled to
7 judgment as a matter of law." Fed. R. Civ. P. 56(a). The party opposing
8 summary judgment must point to specific facts establishing a genuine
9 issue of material fact for trial. *Celotex Corp. v. Catrett*, 477 U.S.
10 317, 324 (1986); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475
11 U.S. 574, 586-87 (1986). If the non-moving party fails to make such a
12 showing for any of the elements essential to its case for which it bears
13 the burden of proof, the trial court should grant the summary judgment
14 motion. *Celotex Corp.*, 477 U.S. at 322.

15 **2. Authority and Analysis**

16 **a. Section 1983 Claims**

17 Defendants seek summary judgment on 1) Mr. Flores' federal and state
18 claims that are based on the May 5, 2009 events because Sergeant Huson
19 is entitled to qualified immunity, and 2) the § 1983 claim against the
20 City because there is no evidence of an unconstitutional policy,
21 practice, or custom. In response, Mr. Flores 1) argues that his § 1983
22 claims survive because Sergeant Huson violated his First Amendment right
23 to free speech and Fourth Amendment right to be free from unreasonable
24 seizure, and 2) clarifies that he is not bringing a § 1983 claim against
25 the City. In reply, Defendants contend that Mr. Flores failed to plead
26 a First-Amendment-based § 1983 claim.

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3 **i. Free Speech**

4 A review of the Complaint, ECF No. [1](#), establishes that Mr. Flores
5 failed to allege a First-Amendment-based § 1983 claim. Neither the
6 factual nor cause-of-action portions of the Complaint indicate that Mr.
7 Flores was claiming that Sergeant Huson violated his First Amendment free
8 speech rights. Notably, under the Complaint's "Second Cause of Action
9 Violation of Civil Rights (42 U.S.C. § 1983)," Mr. Flores specifically
10 alleged, "Under color of state law, Huson deprived Flores of rights
11 afforded to him under the United States Constitution, *principally his*
12 *right against an unreasonable seizure.*" [*Id.*](#) ¶ 4.2 (emphasis added). The
13 Complaint failed to put Defendants on notice that Mr. Flores was alleging
14 a First-Amendment-based § 1983 claim. And Mr. Flores has not requested
15 leave to amend his Complaint.

16 At this stage of the proceeding, the Court will not permit Mr.
17 Flores to add a § 1983 claim based on a First Amendment violation.
18 See *Gilmour v. Gates, McDonald & Co.*, 382 F.3d 1312, 1315 (11th Cir.
19 2004) ("A plaintiff may not amend [the] complaint through argument in a
20 brief opposing summary judgment."). Defendants' motion is granted in
21 this regard.

22 **ii. Unreasonable Seizure**

23 The Court turns to the § 1983 claim that was plead in the Complaint:
24 Mr. Flores' claim that Sergeant Huson arrested him without probable cause
25 and thereby unreasonably seized him in violation of the Fourth Amendment.
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Section 1983 provides a cause of action against persons acting under color of state law who violate a right guaranteed by the U.S. Constitution or federal statutes. 42 U.S.C. § 1983²; *Buckley v. City of Redding*, 66 F.3d 188, 190 (9th Cir. 1995). It is uncontested that Sergeant Huson acted under color of state law; however, Sergeant Huson submits that he is shielded from § 1983 liability because he is entitled to qualified immunity, and that he did not violate Mr. Flores' Fourth Amendment right to be free from unreasonable seizure.

To show that he is entitled to qualified immunity, Sergeant Huson must establish that his "conduct did not violate [a] clearly established statutory or Constitutional right[] of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). This requires the Court to focus on two questions: whether 1) Sergeant Huson violated Mr. Flores' Fourth Amendment right to be free from unreasonable seizure by arresting him for disorderly conduct without a warrant, and 2) Mr. Flores' right to be free from unreasonable seizure was clearly established at the time of the alleged misconduct. See *Pearson v. Callahan*, 129 S. Ct. 808, 818 (2009) (ruling that either of

² Section 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress

42 U.S.C. § 1983.

1 these elements may be analyzed first); *Saucier v. Katz*, 533 U.S. 194, 201
2 (2001) (setting forth elements).

3 **1. Clearly-established right**

4 Whether the right was clearly established is a question of law for
5 the Court. *Romero v. Kitsap Cnty.*, 931 F.2d 624, 628 (9th Cir. 1991).
6 Here, the claimed right is the right to be free from an arrest that is
7 not supported by probable cause.

8 The right to be subjected only to an arrest supported by probable
9 cause is clearly established, but the elements required to satisfy the
10 probable-cause analysis must be clearly established for that particular
11 offense. *Conner v. Heiman*, 672 F.3d 1126, 1132 (9th Cir. 2012) (setting
12 forth "whether it would be clear to a reasonable officer that his conduct
13 was unlawful in the situation he confronted"). If the arresting officer
14 arguably had probable cause to make the arrest, then this element is
15 resolved in the arresting officer's favor. *McComas v. Brickley*, 673 F.3d
16 722, 725 (7th Cir. 2012). Probable cause that a misdemeanor was
17 committed exists "when officers have knowledge or reasonably trustworthy
18 information sufficient to lead a person of reasonable caution to believe
19 that an offense" was or is being committed in their presence. *Rodis v.*
20 *City & Cnty. of San Francisco*, 558 F.3d 964, 969 (9th Cir. 2009).

21 Sergeant Huson arrested Mr. Flores for disorderly conduct in
22 violation of Wenatchee City Code 6A.12.010. Code 6A.12.010 applies to
23 the following:

24 Any person who: shall by noisy, riotous, or tumultuous conduct
25 disturb the quiet and peace of the City, or of any meeting or
assemblage therein; uses, in the presence of another person,
vulgar, profane, or indecent language, or who shall make any
vulgar, profane, obscene or indecent gesture, under

1 circumstances which create a risk of assault; intentionally
2 obstructs vehicular or pedestrian traffic without lawful
3 authority; or shall willfully annoy, bother, molest, insult,
4 or offer an affront or indignity to any person, under
5 circumstances which create a risk of assault.

6 *Id.* Disorderly conduct is a misdemeanor offense, Wenatchee City Code
7 6A.12.020; therefore, the disorderly conduct must be observed by the
8 arresting officer in order for the officer to arrest the individual
9 without a warrant, RCW 10.31.100.

10 Mr. Flores contends 1) it was clearly-established that Wenatchee
11 City Code 6A.12.010 requires him to have actually and intentionally
12 obstructed vehicular and pedestrian traffic such that Methow Street's use
13 was negatively impacted, and 2) there is no evidence that he so
14 obstructed traffic. Mr. Flores therefore argues that it was clearly
15 established that Sergeant Huson did not have probable cause to arrest him
16 for violating Wenatchee City Code 6A.12.010. However, Mr. Flores failed
17 to identify any Washington case law interpreting Wenatchee City Code
18 6A.12.010, or a similar code, that requires evidence that either
19 vehicular or pedestrian traffic was negatively impacted, as opposed to
20 a mere possibility that traffic could be obstructed by the conduct; and
21 the Court could find no such case law. Because it is unclear whether
22 Wenatchee City Code 6A.12.010 requires actual obstruction of a busy
23 street, rather than simply conduct that blocks a sidewalk and lane of
24 traffic but which impacts few drivers and no pedestrians, the Court finds
25 Sergeant Huson arguably had probable cause to make the arrest.
26 Therefore, Sergeant Huson is entitled to qualified immunity on Mr. Flores' § 1983 unreasonable seizure claim. Defendants' motion is granted
in this regard.

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2. Objectively reasonable

For completeness of the record, the Court addresses the second qualified-immunity prong: whether Sergeant Huson violated Mr. Flores' right to be free from unreasonable seizure by arresting him for disorderly conduct without a warrant. The Court finds in favor of Sergeant Huson on this prong as well.

8 An officer in Sergeant Huson's circumstances would reasonably
9 believe that he had probable cause to arrest Mr. Flores for disorderly
10 conduct: intentionally obstructing vehicular and/or pedestrian traffic
11 without lawful authority. Sergeant Huson observed 1) Mr. Flores' truck
12 obstruct traffic given that a) a northbound vehicle was stopped until Mr.
13 Flores' truck cleared the northbound lane, and b) Mr. Moore's vehicle,
14 which Sergeant Huson was aware had been parked there since Mr. Moore's
15 telephone call to the police, only then maneuvered around Mr. Flores'
16 truck, and 2) wood obstructing the sidewalk.

17 Accordingly, under the totality of the circumstances, the Court
18 finds Mr. Flores' Fourth Amendment right to be free from unreasonable
19 seizure was not violated. Defendants' motion is granted in this regard.

iii. City Liability

21 In his response to the summary judgment motion, Mr. Flores clarifies
22 that he is not asserting a 42 U.S.C. § 1983 claim against the City.
23 Accordingly, Defendants' motion seeking summary judgment in the City's
24 favor under § 1983 is granted.

b. False Arrest

1 The Court also grants summary judgment in Sergeant Huson's favor on
2 Mr. Flores' false arrest claim under Washington law. See *Bender v. City*
3 *of Seattle*, 99 Wn.2d 582, 591 (1983) (setting forth claim of false
4 arrest). The Court finds there were reasonable grounds for Sergeant
5 Huson to believe that Mr. Flores violated Wenatchee City Code 6A.12.010.
6 See *McBride v. Walla Walla Co.*, 95 Wn. App. 33, 38 (1999) (finding that
7 probable cause is a complete defense to a false-arrest action).

8 Because Mr. Flores' false arrest claim against Sergeant Huson does
9 not survive summary judgment, his related false-arrest claim for
10 vicarious liability against the City fails. Defendants' motion is
11 granted in this regard.

12 **3. Summary**

13 The Court grants Defendants summary judgment on Mr. Flores' § 1983
14 and false arrest claims.

15 **C. Defendants' Motion to Bifurcate**

16 Defendants ask the Court to bifurcate Mr. Flores' Public Records Act
17 (PRA) claim from his § 1983 and false arrest claims and remand the PRA
18 claim to Chelan County Superior Court. Because the Court grants summary
19 judgment in Defendants' favor as to Mr. Flores' other claims, the Court
20 declines to exercise supplemental jurisdiction over the solely-remaining
21 state-law PRA claim. See 28 U.S.C. § 1337(c)(3) (allowing district court
22 to decline to exercise supplemental jurisdiction if it has dismissed all
23 claims over which it has original jurisdiction). Mr. Flores may file his
24 PRA claim in state court.

25 **D. Conclusion**

26 For the above-given reasons, **IT IS HEREBY ORDERED:**

1. Defendants' Motion for Summary Judgment Dismissal, ECF No. [24](#),
is GRANTED.

2. Defendants' Motion to Bifurcate Plaintiff's False Arrest and
§ 1983 Claims and Public Records Act (RCW 42.56) Violation, **ECF No. 32**,
is **GRANTED**.

3. The Court declines to exercise supplemental jurisdiction over Mr. Flores' Public Records Act claim; Mr. Flores is to file this claim in state court if he so wishes.

4. **Judgment** is to be entered in Defendants' favor **with prejudice** as to Mr. Flores' § 1983 claim against Sergeant Huson and false arrest claim against both Defendants.

5. All hearing and deadlines are **STRICKEN**.

6. This file shall be **CLOSED**.

IT IS SO ORDERED. The District Court Executive is directed to enter this Order and to provide copies to counsel.

DATED this 17th day of May 2012.

S/ Edward F. Shea
EDWARD F. SHEA
United States District Judge

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